

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION AT CLEVELAND

4 UNITED STATES OF AMERICA, Case No. 5:17-cr-493-1

5 Plaintiff,

6 vs.

TUESDAY, JUNE 19, 2018

7 JESSE GULLEY,

8 Defendant.

9
10 TRANSCRIPT OF SENTENCING HEARING
11 HELD BEFORE THE HONORABLE JAMES S. GWIN
12 UNITED STATES DISTRICT JUDGE
13

14 APPEARANCES:

15 For the Plaintiff: Jason M. Katz,
16 Assistant United States Attorney

17 For the Defendant: Carlos Warner, Esq.
18

19
20 Official Court Reporter: Lance A. Boardman, RDR, CRR
21 United States District Court
22 801 West Superior Avenue
23 Court Reporters 7-189
24 Cleveland, Ohio 44113
25 216.357.7019

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

12:36:07 1 (In Open Court.)

12:36:08 2 THE COURT: We're convening on Case Number
12:36:13 3 2017-cr-493, United States vs. Jesse Gulley. The case is
12:36:20 4 here today for sentencing.

12:36:21 5 In this case I'm going to find Mr. Gulley guilty of
12:36:25 6 possession of firearm and ammunition by a convicted felon,
12:36:31 7 in violation of 18 United States Code Section 922(g)(1) and
12:36:36 8 924(a)(2).

12:36:38 9 And I'd ask Mr. Warner and Mr. Gulley to go to the
12:36:41 10 podium.

12:36:51 11 Mr. Gulley, did you receive a copy of the final
12:36:55 12 presentence report?

12:36:55 13 THE DEFENDANT: Yes, sir.

12:36:56 14 THE COURT: Did you go over the whole report
12:36:57 15 with Mr. Warner?

12:36:58 16 THE DEFENDANT: Yes, sir.

12:36:59 17 THE COURT: Did either of you find any
12:37:02 18 mistakes or do either of you raise any objections?

12:37:05 19 MR. WARNER: Judge, there are some objections
12:37:07 20 noted in the report, and I think they've been well argued
12:37:11 21 and responded to. We leave those up to the Court to decide.

12:37:13 22 I do have a few additions to the report that I don't
12:37:17 23 believe will be objected to, basically family members that
12:37:21 24 we'd like to include so they can visit at the Bureau of
12:37:25 25 Prisons.

12:37:26 1 And also, we're maintaining that he did receive his
12:37:28 2 GED while he was incarcerated at the Trumbull Correctional
12:37:33 3 Institution. And that can make a difference, you know, in
12:37:38 4 terms of calculating his custody level going forward.

12:37:42 5 So I would ask for those things. I could give the --

12:37:46 6 THE COURT: Let me -- let's try to deal with
12:37:48 7 them one at a time.

12:37:49 8 MR. WARNER: Sure.

12:37:50 9 THE COURT: I understand you may object to
12:37:52 10 paragraph 11 dealing with the circumstances where the
12:37:58 11 officers first came to the home.

12:38:02 12 MR. WARNER: Correct.

12:38:02 13 THE COURT: I'll overrule that, although I
12:38:04 14 would also indicate that it doesn't -- this seems consistent
12:38:08 15 with police reports, but, more importantly, it's not going
12:38:12 16 to impact the sentence.

12:38:14 17 I also believe you may object to paragraph 14 with
12:38:22 18 regard to statements he made at the time of the original
12:38:27 19 entry.

12:38:28 20 MR. WARNER: Correct, Your Honor.

12:38:29 21 THE COURT: And for the same reason I'll deny
12:38:31 22 that. I think this is consistent with the police reports,
12:38:35 23 but, more important, I do not -- it will not impact the
12:38:40 24 sentence one way or the other.

12:38:43 25 There also may be an objection to paragraphs 17 to 27

12:38:50 1 which relate a long series of interviews with codefendant
12:38:56 2 Thomas Lorenz.

12:38:58 3 Have you received a copy of those at this point? Do
12:39:02 4 you still want -- do you still want to raise that objection
12:39:09 5 or those objections?

12:39:10 6 MR. WARNER: Your Honor, I mean, it's, again,
12:39:12 7 the veracity of those opinions. We disagree with them, and
12:39:15 8 we, as stated in our objection and the previous ones, we
12:39:19 9 don't think they should be considered or impact the sentence
12:39:23 10 that's handed down today as far as the factors go.

12:39:25 11 THE COURT: Okay. And I'll overrule those,
12:39:27 12 although they're largely irrelevant for this sentencing.
12:39:36 13 They actually were probably largely irrelevant for Lorenz'
12:39:41 14 sentencing too.

12:39:45 15 Do you also object to 58?

12:39:48 16 MR. WARNER: Same grounds, Your Honor.

12:39:50 17 THE COURT: Once again, I'll overrule the
12:39:53 18 objection. I think that conviction's the more important
12:39:57 19 issue here and -- or not the conviction but the fact that a
12:40:02 20 charge was brought is the more important factor, but I
12:40:07 21 understand that there was not a conviction on the felonious
12:40:15 22 assault. And it will not impact the sentence, the fact that
12:40:18 23 the charge was originally made.

12:40:23 24 Is there still an objection to 60?

12:40:25 25 MR. WARNER: Yes, Your Honor, same basis.

12:40:27 1 THE COURT: Okay. I'll overrule that. I'll,
12:40:30 2 once again, find that there was evidence that he had gang
12:40:33 3 affiliation. But once again, by his own statements it
12:40:37 4 sounded like any such gang affiliation was in his past and
12:40:44 5 would not directly affect the sentence in this case.

12:40:49 6 Is there still an objection to 62, 63, and 64?

12:40:56 7 MR. WARNER: Judge, I think those have been
12:40:58 8 resolved.

12:40:58 9 THE COURT: Okay. And is there still an
12:41:00 10 objection to 79?

12:41:02 11 MR. WARNER: That's been resolved as well.

12:41:03 12 THE COURT: Okay. With those, do you have any
12:41:07 13 other objections or do you suggest any other corrections?

12:41:12 14 MR. WARNER: The additions would just be
12:41:15 15 family members that I can list here on the record or
12:41:18 16 afterwards I can provide them.

12:41:19 17 THE COURT: Why don't you go ahead and list
12:41:21 18 them.

12:41:21 19 MR. WARNER: Okay.

12:41:21 20 THE COURT: And that would probably be an
12:41:37 21 amendment to paragraphs 75 and 76.

12:41:40 22 MR. WARNER: That sounds right, Your Honor.

12:41:42 23 The names would be Venecia Sales. That's a cousin.
12:41:50 24 V-E-N-E-C-I-A.

12:41:56 25 Phyllis Washington, another cousin.

12:42:00 1 Kamea Richburgh, K-A-M-E-A, Rich -- R-I-C-H-B-U-R-G-H,
12:42:11 2 another cousin.

12:42:12 3 Desiree Bell, a sister.

12:42:18 4 Titeisha Gulley, T-I-T-E-I-S-H-A, Gulley, as spelled
12:42:32 5 like Mr. Gulley's name. That's his sister.

12:42:34 6 Teressa Kabbett, T-E-R-E-S-S-A, K-A-B-B-E-T-T. This
12:42:47 7 is a religious advisor, Your Honor.

12:42:49 8 And Claudette Russell, another cousin, spelled as
12:42:53 9 stated.

12:42:53 10 And then we would also like -- ask for the amendment
12:42:57 11 that his GED was obtained at Trumbull Correctional
12:43:01 12 Institution. And he can answer any inquiry the Court might
12:43:05 13 have regarding that. Those would be our requests.

12:43:08 14 THE COURT: Does the United States have any
12:43:09 15 objection to any of those suggested amendments?

12:43:12 16 MR. KATZ: No, Judge.

12:43:15 17 THE COURT: Okay. The Court will order that
12:43:18 18 the PSR be amended to reflect those relatives.

12:43:25 19 Does the United States have any argument before
12:43:27 20 sentence is imposed?

12:43:28 21 MR. KATZ: Yes, Judge. But before I get to
12:43:32 22 that, Judge, in going over the report earlier, I found there
12:43:34 23 were two minor changes I'd suggest.

12:43:38 24 On paragraph 18 at the bottom, actually the last line
12:43:42 25 of paragraph 18 on page ID 458, I believe it says Thomas

12:43:48 1 Gulley. I believe that's a misprint and it should be Jesse.
12:43:52 2 It says that he sold Ikasha Clark and Thomas Gulley a Glock
12:43:58 3 27. I believe that should be reference to the defendant
12:44:00 4 here in this case, Jesse Gulley.

12:44:01 5 THE COURT: Is there any objection to that?

12:44:03 6 MR. WARNER: No, Your Honor.

12:44:06 7 MR. KATZ: And the other is a typographical
12:44:08 8 error, Judge, on paragraph 26, page ID 406. The last
12:44:12 9 sentence says that Mr. Lorenz had possessed body "army." I
12:44:18 10 believe it should be body "armor."

12:44:20 11 THE COURT: Which paragraph is that?

12:44:22 12 MR. KATZ: That is paragraph 26, Your Honor,
12:44:24 13 the last sentence, second to the last line.

12:44:45 14 THE COURT: Okay. In this case I endeavor to
12:44:54 15 impose a sentence that's sufficient but not longer than
12:44:56 16 needed. In doing that, I first consider the guideline
12:45:00 17 calculations.

12:45:02 18 I set the base offense level at 20. I find that seven
12:45:07 19 firearms were involved. I therefore raise the offense level
12:45:10 20 two levels. I also find that the machine gun had been
12:45:14 21 stolen. I raise the offense level two additional levels.

12:45:19 22 The adjusted offense level is set at 24. Mr. Gulley
12:45:24 23 receives three levels off for acceptance of responsibility.
12:45:29 24 I set the total offense level at 21.

12:45:33 25 I find that Mr. Gulley has a subtotal criminal history

12:45:40 1 score of 3. I also find that he committed the current
12:45:44 2 offense while he was under a criminal justice sentence. I
12:45:48 3 therefore add two points. The total criminal history score
12:45:52 4 is 5.

12:45:56 5 Mr. Gulley has a criminal history category of III.

12:46:00 6 Having made those findings, does the United States
12:46:03 7 have any argument before sentencing?

12:46:07 8 MR. KATZ: Your Honor, the Government has
12:46:10 9 looked thoroughly through this case, the PSR, and the
12:46:13 10 Government believes a sentence within the guidelines is
12:46:15 11 appropriate for Mr. Gulley and asks that a sentence within
12:46:17 12 that pursuant to 3553(a) be imposed.

12:46:20 13 THE COURT: Okay. And do you have any
12:46:22 14 argument, Mr. Warner?

12:46:23 15 MR. WARNER: Judge, I'll keep it brief.

12:46:24 16 I have to compliment Ms. Morgan on this case for doing
12:46:29 17 a thorough presentence report. It was well over I'd say a
12:46:34 18 two-hour interview. And there were tears. Mr. Gulley comes
12:46:39 19 from a very difficult childhood. I think that that's
12:46:42 20 spelled out very well in the report. That affects him and
12:46:48 21 has affected him and continues to affect him, and it does
12:46:52 22 explain much of the conduct here.

12:46:55 23 We did file a presentencing memorandum in this case
12:46:59 24 which included letters of support and outlines some of the
12:47:06 25 things that Mr. Gulley was engaging in in the community

12:47:08 1 before his arrest. We think the Court should consider all
12:47:12 2 of these things in imposing a sentence on this case, and a
12:47:20 3 short -- a sentence at the low end of the guidelines,
12:47:22 4 shorter end of the guidelines, we believe would be
12:47:24 5 appropriate in this case.

12:47:25 6 I would turn it over to him if the Court pleases.

12:47:27 7 THE COURT: Is there anything you want to say,
12:47:28 8 Mr. Gulley?

12:47:29 9 THE DEFENDANT: I just want to accept
12:47:37 10 responsibility for my conduct and move forward on a more
12:47:41 11 positive note and be a better, productive person when I get
12:47:48 12 back out there in society and do what's right.

12:47:53 13 THE COURT: In this case I set the offense
12:47:55 14 level at 21, and the criminal history category is a criminal
12:48:01 15 history category of III.

12:48:03 16 I also will consider and have considered the 3553
12:48:11 17 factors. In summary, the first of those is the nature and
12:48:19 18 circumstances of the offense. This did involve the purchase
12:48:22 19 of a stolen machine gun from what appears to have been a
12:48:26 20 former firearm dealer. It also appears that you had made a
12:48:34 21 number of purchases from him, most of these done as straw
12:48:39 22 purchases through Ikasha Clark, who was your wife. She had
12:48:46 23 a carry permit, and it appears that she purchased many, if
12:48:53 24 not most, of these guns. But she, once again, purchased
12:48:56 25 them for you.

12:48:57 1 I also consider your own history and background. As
12:49:05 2 Mr. Warner has indicated, some of your family circumstances
12:49:08 3 make you somewhat less blameworthy. Some of the
12:49:11 4 circumstances growing up appear to have been difficult.

12:49:18 5 You also, though, have had a relatively bad criminal
12:49:23 6 record in the past. There's been a lot of arrests; there's
12:49:26 7 been a lot of involvement with drug dealing.

12:49:34 8 On the personal side, it appears that you have a
12:49:36 9 number of children. You actually have a number of wives.
12:49:39 10 And it appears that you continue to have some relatively
12:49:43 11 close relationship with them.

12:49:47 12 The thing that stands out the most though is the fact
12:49:49 13 that it appears that the purchase of the firearms was
12:49:55 14 largely related to drug dealing. And the purchase of the
12:50:00 15 machine gun was specifically for protection or otherwise but
12:50:04 16 related to the drug dealing.

12:50:09 17 And there appears to be some relatively good reason
12:50:14 18 for you to feel some concern about that. I believe you've
12:50:19 19 been shot twice or three times?

12:50:23 20 THE DEFENDANT: Four.

12:50:25 21 THE COURT: So you've been shot a number of
12:50:29 22 times that kind of all reflect going back on this long
12:50:31 23 history of dealing with drug dealing.

12:50:36 24 I believe one of those shootings you may have lost
12:50:39 25 sight in one of the eyes?

12:50:41 1 THE DEFENDANT: Yes, sir.

12:50:41 2 THE COURT: And otherwise, your physical
12:50:47 3 condition seems to be uneventful. There was some indication
12:50:53 4 that there may have been attention deficit hyperactive
12:50:58 5 disorder at an earlier age, but that doesn't seem to have
12:51:00 6 played a part in this.

12:51:02 7 It also appears that you had had some substance abuse
12:51:07 8 problems, most of those involving alcohol or marijuana,
12:51:12 9 although it appears that you had largely gotten beyond that.

12:51:19 10 In terms of employment, you were earning quite a bit
12:51:24 11 of money. It's somewhat unclear as to how much money was
12:51:28 12 associated with the drug dealing and how much was associated
12:51:30 13 with this bar that you owned. But it appeared that you had
12:51:34 14 quite a bit of income.

12:51:39 15 I don't find -- I also have considered the need for
12:51:42 16 the sentence to reflect just punishment, afford adequate
12:51:46 17 deterrence, and protect the public.

12:51:50 18 The thing that stands out here is probably the
12:51:53 19 involvement with the criminal activity over a long period of
12:51:59 20 time, including a number of larger -- or longer sentences.
12:52:06 21 So deterrence -- individual deterrence is a factor in this
12:52:09 22 case, as is incapacitation and the need to protect the
12:52:16 23 public.

12:52:16 24 So having considered all these factors and I believe
12:52:21 25 consistent with the Sentencing Reform Act, I'm going to

12:52:24 1 sentence you to a guideline sentence of 48 months, somewhat
12:52:31 2 closer to the lower end of the guidelines but somewhat above
12:52:36 3 the minimal -- or the lower end of the guidelines.

12:52:41 4 After release from incarceration you'll be put on
12:52:43 5 supervised release for three years. You need to report for
12:52:48 6 that within 72 hours after release from custody. You'll
12:52:52 7 need to report to the probation office nearest the location
12:52:58 8 to which you're released.

12:52:59 9 I'll waive the imposition of a fine.

12:53:03 10 I'll impose a \$100 special assessment which will be
12:53:05 11 payable today.

12:53:06 12 While you're under supervised release, you'll be
12:53:08 13 subject to the standard conditions. Additionally, you're
12:53:13 14 not to unlawfully use any controlled substance. You'll need
12:53:17 15 to submit to one drug test within 15 days of starting
12:53:21 16 supervision and at least two periodic tests after that.

12:53:27 17 You'll be required to make financial disclosure during
12:53:30 18 the supervised release. You're also not to open any new
12:53:34 19 credit charges or lines of credit without prior approval.

12:53:38 20 If the probation officer directs, you'll have to
12:53:41 21 participate in any substance abuse treatment and testing
12:53:46 22 program. You'll also have to fully participate in any
12:53:52 23 cognitive-behavioral program that might be recommended.

12:54:00 24 You'll, finally, have to consent to a search of your
12:54:04 25 person, property, residence, vehicle, or paper and computer

12:54:11 1 if the probation officer reasonably suspects that there
12:54:17 2 might be a violation of the supervised release.

12:54:18 3 Finally, no interaction with known members of the
12:54:27 4 South Side Gang without prior approval from the probation
12:54:33 5 officer.

12:54:33 6 I'll order you be given credit for any time that
12:54:36 7 you've already served.

12:54:36 8 I'll also advise that you may have some right to take
12:54:39 9 an appeal from this. If you wanted to take an appeal from
12:54:43 10 this and if you did not have enough money to pay for such an
12:54:48 11 appeal, you would have a right to have counsel appointed to
12:54:52 12 represent you.

12:54:53 13 I'd ask, Mr. Warner, that you speak with your client,
12:54:57 14 and if he has a belief that he wants to try an appeal, I'd
12:55:01 15 ask you to see that it become timely filed. I think he may
12:55:06 16 have waived and given up --

12:55:08 17 MR. WARNER: Your Honor, this is a conditional
12:55:10 18 plea, so we would preserve pursuant to --

12:55:14 19 THE COURT: Okay. I forgot.

12:55:17 20 Did you retain the right to appeal the suppression?

12:55:22 21 MR. WARNER: Yes, that's correct. And we
12:55:24 22 would maintain whatever objection we have there for the
12:55:25 23 circuit if it requires it at this point in the sentencing.
12:55:27 24 But we otherwise thank the Court for its sentence.

12:55:31 25 THE COURT: Okay. Does the United States have

12:55:34 1 any objection?

12:55:35 2 MR. KATZ: No objection, Your Honor.

12:55:40 3 THE COURT: Retaining the right to appeal the
12:55:43 4 suppression, apart from that do you have any objection?

12:55:46 5 MR. WARNER: No, Your Honor.

12:55:46 6 We'd ask the Court that it recommend Elkton in this
12:55:49 7 case as a placement. He understands that's not -- that's
12:55:53 8 only a recommendation, but we'd ask the Court make that
12:55:56 9 recommendation for us.

12:55:56 10 THE COURT: And I'll make that recommendation
12:56:02 11 but, once again, with the acknowledgement that the BOP will
12:56:05 12 make their own decisions on this. But hopefully they'll
12:56:08 13 consider it.

12:56:08 14 MR. WARNER: Thank you, Your Honor.

12:56:09 15 THE COURT: Okay. Thanks everyone.

12:56:11 16 MR. KATZ: Judge, although I didn't have an
12:56:13 17 objection, I do have some notes.

12:56:14 18 The Government formally moves to dismiss Counts 1 and
12:56:17 19 4 in the indictment.

12:56:18 20 THE COURT: And I'll grant that motion.

12:56:19 21 MR. KATZ: And finally, Judge, I believe this
12:56:21 22 is the last defendant to be sentenced on this particular
12:56:24 23 indictment. Because there are no suggestions of any
12:56:28 24 interest in any property on this case, the Government asks
12:56:31 25 that you consider the motion for preliminary order of

12:56:34 1 forfeiture that has been filed as document 84 and the
12:56:37 2 attached proposed entry for forfeiture.

12:56:39 3 THE COURT: Is there any objection to that?

12:56:41 4 MR. WARNER: Judge, I did e-mail -- I think
12:56:43 5 that might involve his automobile. I did e-mail Mr. Howell
12:56:50 6 on this case regarding some materials inside of the
12:56:52 7 automobile that we're trying to retrieve. With that
12:56:55 8 outstanding -- we need to get some legal documents that are
12:56:58 9 unrelated to the case, but with that outstanding, we don't
12:57:02 10 object to the repossession of the vehicle. I think that
12:57:04 11 that's what was at play here.

12:57:07 12 THE COURT: Wasn't there also a mortgage on
12:57:08 13 the vehicle?

12:57:09 14 MR. WARNER: Yes.

12:57:14 15 MR. KATZ: Well, Judge, I think Attorney
12:57:16 16 Warner -- AUSA Tripi would be the one to contact.

12:57:21 17 MR. WARNER: I'd be happy to follow up on
12:57:25 18 that, Your Honor.

12:57:25 19 THE COURT: I'll approve the temporary
12:57:27 20 forfeiture or approve the suggested, but we'll go through
12:57:30 21 the remaining steps with regard to the final forfeiture.
12:57:36 22 Okay?

12:57:36 23 MR. KATZ: Thank you, Judge.

12:57:37 24 THE COURT: Thanks everyone.

12:57:38 25 MR. WARNER: Thank you, Your Honor.

12:57:38

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THE COURT: And we'll adjourn.

12:57:42

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(Proceedings adjourned at 12:57 p.m.)

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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript
of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

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<u>/s/ Lance A. Boardman</u>	<u>07/11/2018</u>
Lance A. Boardman, RDR, CRR	DATE

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